

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

NELSON KENNEDY, JR.,

Petitioner,

v.

CIVIL ACTION NO. 2:18cv503

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a petition for a writ of habeas corpus (ECF No. 1) filed pursuant to 28 U.S.C. § 2254, and the Respondent's motion to dismiss (ECF No. 10). On June 19, 2014, before the Circuit Court of the City of Fredericksburg, Petitioner pleaded guilty to shooting within an occupied dwelling, and entered Alford pleas to attempted capital murder of a law enforcement officer and use of a firearm in the commission of a felony. The Petitioner was sentenced to forty-three years of incarceration with twenty-three years suspended.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation entered on November 26, 2019 (ECF No. 18), the Magistrate Judge recommended the motion to dismiss be granted, and the petition be denied and dismissed with prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. Neither the Petitioner nor the Respondent filed objections with the Court and the time to do so has expired.

Having reviewed the record and having heard no objection, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation (ECF No. 18) in its entirety as the Court's own opinion. Accordingly, the Respondent's motion to dismiss (ECF No. 10) is **GRANTED**, and the Petition (ECF No. 1) is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent.

The Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.

Norfolk, Virginia
January 15, 2020



Raymond A. Jackson
United States District Judge